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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10

11 A.B., a minor, By and Through W.F.B., His
 Guardian Ad Litem,

12 Plaintiffs,

13 vs.

14 SAN FRANCISCO UNIFIED SCHOOL
 15 DISTRICT,

16 ,
 17 Defendant.

CASE NO. C 07-4738 (PJH)

STIPULATION TO CONTINUE DEADLINE
 FOR REPLY BRIEFS, ALLOW BRIEF SUR-
 REPLY AND CONTINUE HEARING ON
 CROSS-MOTIONS FOR SUMMARY
 JUDGMENT; [PROPOSED] ORDER

18 Plaintiff A.B. (Plaintiff) and defendant San Francisco Unified School District ("District")
 19 hereby provide this Court with the following Stipulation and Proposed Order to modify the
 20 briefing schedule on the parties' cross-motions for summary judgment and continue the hearing on
 21 those motions. This Stipulation also provides for Defendant to file a brief sur-reply to additional
 22 evidence to be discussed in Plaintiff's reply brief.

23 1. This action is an appeal from a special education due process proceeding under the
 24 Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*). Plaintiff filed his
 25 Complaint on September 14, 2007.

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C 07-4738 (PJH)

STIPULATION TO CONTINUE DEADLINE FOR REPLY BRIEFS, ALLOW BRIEF SUR-REPLY AND
 CONTINUE HEARING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT; [PROPOSED] ORDER

1 2. On December 20, 2007, the parties attended a Case Management Conference at
 2 which time the Court set the following schedule for this matter:

3 April 16, 2008 Parties to file cross-motions for summary judgment
 4 May 14, 2008 Parties to file opposition briefs
 5 May 28, 2008 Parties to file reply briefs
 6 June 25, 2008 Hearing on cross-motions for summary judgment, 9:00 a.m.

7 3. Plaintiff obtained a copy of the administrative record from the Office of
 8 Administrative Hearings. The record currently is 3603 pages long. Both parties reviewed the
 9 entire record prior to Plaintiff lodging it with the Court.

10 4. On April 11, 2008, Plaintiff lodged a copy of the record with the Court.

11 5. On April 16, 2008, the parties filed their cross-motions for summary judgment.

12 6. While preparing Plaintiff's opposition to the District's motion, counsel for Plaintiff
 13 discovered that the testimony of two witnesses was missing from the official record.

14 7. Plaintiff's counsel has spoken to the Office of Administrative Hearings which has
 15 indicated that it has a recording of the missing transcript, specifically the morning of March 2,
 16 2007, and that it will have a transcript of the recording expedited. OAH can deliver the missing
 17 transcript pages to Plaintiff's counsel no later than May 28, 2008.

18 8. The Ninth Circuit has held that parties may supplement the administrative record
 19 when gaps are discovered. *Ojai Unified School District v. Bion Jackson*, 4 F.3d. 1467 (9th Cir.
 20 1993) cert denied 115 S.Ct. 90 (1994).

21 9. Based on the discovery of missing testimony and Plaintiff's interest in citing to this
 22 evidence as part of his argument in this case, the parties stipulate to and request the following
 23 modification of the schedule in this matter:

24 June 4, 2008 Plaintiff to reproduce and provide copies of the administrative record to
 25 opposing counsel and the Court, sequentially bates labeled to the
 26 administrative record already on file
 27 June 18, 2008 Parties to file their reply briefs

June 25, 2008 District to file a sur-reply of no more than four (4) pages to specifically and solely address any argument presented by Plaintiff based on the supplemental evidence

July 23, 2008 Hearing on cross-motions for summary judgment; 9:00 a.m.

5 10. Good cause exists for the brief continuances in this case, specifically to allow the
6 Court to consider the full administrative record and to allow Plaintiff to discuss and the District to
7 respond to the evidence presented by two of Plaintiff's witnesses in the administrative proceeding.

8 | DATED: May 20, 2008

10 By: /s/ Roberta Savage
11 Roberta Savage,
Attorneys for Plaintiff, A.B.

13 DATED: May 20, 2008 FAGEN FRIEDMAN & FULLFROST, LLP

15 By: /s/ Kimberly A. Smith
16 Kimberly A. Smith
17 Attorneys for Defendant, SAN FRANCISCO
UNIFIED SCHOOL DISTRICT

18 I, Kimberly A. Smith, am the ECF User whose ID and password are being used to file this
19 STIPULATION TO CONTINUE DEADLINE FOR REPLY BRIEFS, ALLOW BRIEF SUR-
20 REPLY AND CONTINUE HEARING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT.
21 In compliance with General Order 45, X.B., I hereby attest that Roberta Savage has concurred in
22 this filing.

23 | DATED: May 20, 2008 FAGEN FRIEDMAN & FULFROST, LLP

25 By: /s/ Kimberly A. Smith
26 Kimberly A. Smith
27 Attorneys for Defendant, PAJARO VALLEY
UNIFIED SCHOOL DISTRICT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

10

11 A.B., a minor, By and Through W.F.B., His
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12 Plaintiffs,

13 vs.

14 SAN FRANCISCO UNIFIED SCHOOL
15 DISTRICT,

16 Defendant.

CASE NO. C 07-4738 (PJH)

[PROPOSED] ORDER

17

ORDER

18 The Court, having reviewed and considered the STIPULATION TO CONTINUE
19 DEADLINE FOR REPLY BRIEFS, ALLOW BRIEF SUR-REPLY AND CONTINUE
20 HEARING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT and finding good cause,
21 does hereby **ORDER** that the parties' reply briefs shall be filed by June 18, 2008. Defendant San
22 Francisco Unified School District shall be permitted to file a sur-reply of no more than four (4)
23 pages, no later than June 25, 2008, to specifically and solely address any argument presented by
24 Plaintiff based on the supplemental evidence being lodged with the Court.

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C 07-4738 (PJH)

[PROPOSED] ORDER

The Court further **ORDERS** that the hearing on the parties' cross-motions for summary judgment shall be continued to July 23, 2008 at 9:00 a.m.

IT IS SO ORDERED.

5 | DATED: _____

JUDGE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT JUDGE